

No. 11899

---

United States  
Circuit Court of Appeals  
For the Ninth Circuit

---

ERMELINDO ESCOBEDO and LEO ESCOBEDO, Claimants of One 1947 Model Ford V8 Station Wagon Automobile,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

---

Apostles on Appeal

---

Upon Appeal from the District Court of the United States  
for the District of Montana

FILED

JUN 2 - 1948

PAUL P. O'BRIEN,  
CLERK



No. 11899

---

United States  
Circuit Court of Appeals

For the Ninth Circuit

---

ERMELINDO ESCOBEDO and LEO ESCOBEDO, Claimants of One 1947 Model Ford V8 Station Wagon Automobile,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee.

---

Apostles on Appeal

---

Upon Appeal from the District Court of the United States  
for the District of Montana

---

	PAGE
Record of Trial of Criminal Case No. 7779.....	12
Witnesses:	
Autobee, Pete.....	38
Bigman, Max.....	25
Escobedo, Ermelindo.....	44
Escobedo, Leo.....	41
Gress, William.....	37
Grudzinski, William.....	22
Harwood, Louis B.....	13, 45
Hawks, Clyde.....	28
Lipp, F. M.....	27
McGarrity, Carl.....	27
Witnesses for Defendant:	
Melendrez, Manuel.....	39
Melendrez, Ralph.....	28
Shaller, Paul.....	26
Reply of Libelant.....	11
Statement of Points on Which Appellants In- tend to Rely on This Appeal.....	59
Stipulation as to Record on Appeal.....	54

NAMES AND ADDRESSES OF ATTORNEYS  
OF RECORD

MR. MERLE C. GROENE,  
319 Securities Building,  
Billings, Montana.

Attorney for Appellants and  
Libelees-Claimants.

MR. JOHN B. TANSIL,  
United States District Attorney,  
Billings, Montana.

MR. FRANKLIN A. LAMB,  
Assistant United States District Attorney,  
Billings, Montana.

Attorneys for Appellee and Libelant.

In the District Court of the United States in and for  
the District of Montana, Billings Division

No. 953

UNITED STATES OF AMERICA,

Libelant,

vs.

ONE 1947 MODEL FORD V8 STATION WAGON  
AUTOMOBILE, Motor Number 20 327, bear-  
ing Montana 1947 License Number 22-T1307,  
together with its tools, parts, accessories and  
appurtenances (Seized from Ralph Melendrez,  
Emerlindo Escobedo and Leo Escobedo),  
Libelees.

Be It Remembered that on April 23, 1947, a Libel  
of Information was duly filed herein, being in the  
words and figures following, to wit: [2\*]

[Title of District Court and Cause.]

### LIBEL OF INFORMATION

To the Honorable, the Judge of the District Court  
of the United States, in and for the District  
of Montana:

The United States of America, in its own right,  
by Franklin A. Lamb, Assistant Attorney of the  
United States, in and for the District of Montana,  
its proctor, brings this libel of information against

---

\*Page numbering appearing at foot of page of original certified  
Transcript of Record.

the libelees above named, and against all persons lawfully intervening for their interest therein, in a civil cause of forfeiture, for a breach of the Indian Liquor Laws of the United States of America, and upon information and belief alleges as follows:

### I.

That at all times herein mentioned the libelant was and now is a sovereign power; and that the above-entitled Court has jurisdiction herein for the reason that the United States is the party libelant, and said cause is brought under the Indian Liquor Laws of the United States of America.

### II.

That on or about the 12th day of April, 1947, on the Northeast Quarter of the Southeast Quarter of Section 3, [3] Township 2 South, Range 33 East, Montana Principal Meridian, in the County of Big Horn, being the land on the right side of the road, and the North Half of the Southwest Quarter, Section 2, Township 2 South, Range 33 East, Montana Principal Meridian, in the County of Big Horn, being the land on the left side of the road, at a point on the county road about 2.9 miles from the city of Hardin, in the County of Big Horn, within the boundaries of the Crow Indian Reservation, in the State and District of Montana, and within the jurisdiction of this Court, Louis B. Harwood, Special Officer, U. S. Indian Service, and William Grudzinski, Police Officer for the City of Hardin,

Montana, seized on land the following described automobile and motor vehicle, to wit:

One 1947 Model Ford V8 Station Wagon Automobile, Motor Number 20 327, bearing Montana 1947 License Number 22-T1307, together with its tools, parts, accessories and appurtenances.

### III.

That previous to the seizure above-described, Ralph Melendrez, Ermelindo Escobedo and Leo Escobedo had wilfully, wrongfully and unlawfully introduced and conveyed into said Crow Indian Reservation, which said Indian Reservation was at all times herein mentioned, ever since has been, and now is Indian country, a quantity of a certain vinous and intoxicating liquor, to wit: wine, a more particular description of said vinous and intoxicating liquor being to this informant unknown, by means of said automobile and motor vehicle, and at said time and place the said Ralph Melendrez, Ermelindo Escobedo and Leo Escobedo were then and there in the possession of said vinous and intoxicating liquor in said automobile and motor vehicle, which was then and there, and had been theretofore, used in introducing and conveying said vinous and intoxicating liquor, [4] as aforesaid, into said Indian country, where the introduction thereof is, and was, at all of the times herein mentioned, prohibited by treaty and Federal statute and contrary to the



form, force and effect of the statute in such case made and provided, and against the peace and dignity of the United States of America.

#### IV.

That by reason of the premises the said automobile and motor vehicle has become and now is subject to forfeiture and condemnation; and that before the commencement hereof the seizure above mentioned was adopted by the Superintendent of Indian Affairs of the said Crow Indian Reservation; and said automobile and motor vehicle is now in his possession and stored at the Agency Garage at Crow Agency, Big Horn County, Montana.

Wherefore, libelant prays that due process issue herein to enforce said forfeiture; that a time and place be fixed for the trial and hearing of this libel upon due notice to all persons concerned in interest to appear and show cause at the return day of the process why the forfeiture should not be decreed and that upon said hearing said automobile and motor vehicle be condemned and forfeited to the United States and that the same be sold or otherwise disposed of as provided by law.

FRANKLIN A. LAMB,

Assistant Attorney of the United States,  
in and for the District of Montana.

United States of America,  
District of Montana—ss.

Franklin A. Lamb, being first duly sworn, on oath, deposes and says:

That he is a duly appointed, qualified and acting Assistant Attorney of the United States, in and for the District [5] of Montana, and as such, makes this verification to the foregoing libel of information; that he has read the said libel of information; and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

FRANKLIN A. LAMB.

Subscribed and sworn to before me this 22nd day of April, 1947.

[Seal]                      DALE F. GALLES,  
Notary Public for the State of Montana, Residing  
in Billings, Montana.

My commission expires April 15, 1949.

[Endorsed]: Filed April 23, 1947. [6]

Thereafter, on May 2, 1947, an Information was duly filed in Criminal Case No. 7779, United States of America vs. Ralph Melendrez, Ermelindo Escobedo and Leo Escobedo, in the words and figures following, to wit: [7]

[Title of District Court and Cause.]

No. 7779

### INFORMATION

The United States Attorney Charges:

Count One  
(Introducing)  
(25-241)

(Max: 1 yr. and \$500)

That the above-named defendants Ralph Melendrez, Ermelindo Escobedo and Leo Escobedo, whose true names are to the informant aforesaid unknown, on or about the 12th day of April, 1947, within the boundaries of the Crow Indian Reservation, in the State and district of Montana, and within the jurisdiction of this Court, did, then and there, wilfully, wrongfully and unlawfully introduce into said Crow Indian Reservation a quantity of a certain vinous and intoxicating liquor, to wit: wine, the exact quantity and character of which are to the informant aforesaid unknown, the said Crow Indian Reservation then and there being an Indian country and under the exclusive jurisdiction of the United States; contrary to the form, force and effect of the statute in such case made and provided, and

against the peace and dignity of the United States of America. [8]

Count Two

(Possession)

(25-244)

(Max: 1 yr. and \$500)

That said Ralph Melendrez, Ermelindo Escobedo and Leo Escobedo, whose true names are to the informant aforesaid unknown, on or about the 12th day of April, 1947, within the boundaries of the Crow Indian Reservation, in the State and district of Montana, and within the jurisdiction of this Court, a more particular description thereof being to this informant unknown, did, then and there, wilfully, wrongfully and unlawfully have in their possession a quantity of a certain vinous and itoxicating liquor, to wit: wine, the exact quantity and character of which are to the informant aforesaid unknown, the said Crow Indian Reservation then and there being Indian country where the introduction of intoxicating liquor is, and at all of the time herein mentioned, was, prohibited by treaty and Federal statute, and under the exclusive jurisdiction of the United States; contrary to the form, force and effect of the Statute in such case made and provided, and against the peace and dignity of the United States of America.

FRANKLIN A. LAMB,

Assistant Attorney of the United States,  
in and for the District of Montana.

Thereafter, on June 17, 1947, the Answer of Ermelindo Escobedo, et al, was duly filed herein, in the words and figures following, to wit:

[Title of District Court and Cause.]

No. 953

ANSWER OF ERMELINDO ESCOBEDO, LEO  
ESCOBEDO AND WALTER McLAUGH-  
LIN, DOING BUSINESS AS MOUNTAIN  
STATES INSURANCE COMPANY, LIEN  
CLAIMANT

Comes now Ermelindo Escobedo and Leo Escobedo, two of the above named Libelees, and Walter McLaughlin, doing business as Mountain States Insurance Company, lien claimant, and answering the Libel of Information herein, admit, deny and allege as follows:

1. Admit the allegations of Paragraphs 1 and 2, thereof.

2. Answering Paragraph 3, thereof, these answering Libelees and lien claimant deny that previous to the seizure above described, or at any other time, or at all, that Ermelindo Escobedo and Leo Escobedo had wilfully, or wrongfully, or unlawfully introduced or conveyed into said Crow Indian Reservation a quantity, or any wine or other vinous or intoxicating liquor by means of said automobile and motor vehicle; admit that upon the said search some wine was found in said car in the possession of one Ralph Melendrez, but deny that they, or said automobile was being used for the purpose of intro-

ducing or conveying said wine into Indian Country; deny that it had therefore been so used, and deny each and every allegation of said paragraph.

3. Deny that by reason of the allegations of Paragraph 3, or otherwise, or at all, that said automobile has become or is now subject to forfeiture or condemnation as therein set forth, or otherwise, or at all. As to the allegations that the seizure was adopted by the Superintendent of Indian Affairs of the Crow Indian Reservation libelees and lien claimant allege that they have no knowledge or information thereof sufficient to form a belief and therefore deny the same; admit that said automobile is in the Agency Garage at Crow Agency, Big Horn [11] County, Montana.

Further Answering Said Libel of Information Libelees and lien claimant allege: That at the time of the seizure of said automobile, the said Ralph Melendrez was a guest in said automobile, was not driving the same, and had no dominion over the said automobile; that when the said automobile was seized the wine referred to in the Libel of Information was wine that had been carried into said automobile by the said Ralph Melendrez; that at no time preceding the said seizure nor at the time of said seizure did these answering Libelees and lien claimant have any information whatsoever, or any knowledge or notice that the said Ralph Melendrez had carried wine into said automobile, or that said automobile contained any wine.



Having so answered said Libel, Libelees and lien claimant pray that, by proper order of this Court the said automobile be released and ordered forth-with delivered to the said Ermelindo Escobedo and Leo Escobedo, and the said Walter McLaughlin.

MERLE C. GROENE,

Attorney for Libelees and  
Lien Claimant.

Service of the within admitted and a copy had this 13th day of June, 1947.

/s/ JOHN B. TANSIL,

United States Attorney.

By FRANKLIN A. LAMB,

Asst. United States Attorney.

[Endorsed]: Filed June 17, 1947. [12]

---

Thereafter, on July 24, 1947, the Reply of the Libelant, United States of America, was duly filed herein, in the words and figures following, to wit:

[Title of District Court and Cause.]

## REPLY

Comes now the United States of America, the libelant herein and for its reply to the answer of the libelees herein, and for its reply, admits, denies and alleges:

### I.

That as to that portion of libelees answer designated as further answer, the libelant has no knowledge nor information concerning the allegation

therein contained and for that reason denies each and every allegation and the whole thereof, and further alleges that the libelees and the said Ralph Melendrez were on a joint venture and that the libelees had knowledge of the presence of intoxicating liquor in said automobile prior to its introduction into the Indian country.

Wherefore having fully replied to the answer of libelees and the lien claimant, the libelant prays that said automobile be forfeited and that such other and further orders issue as may be just and proper.

JOHN B. TANSIL,

United States Attorney in and for the District of  
Montana.

FRANKLIN A. LAMB,

Assistant United States  
Attorney.

[Endorsed]: Filed July 24, 1947. [14]

---

Thereafter, on November 3rd and 4th, 1947, the Criminal Case No. 7779, United States vs. Ralph Melendrez, et al., was duly tried before a jury, the record of said trial being as follows, to wit:

Be it Remembered that this cause came on regularly for hearing in the United States District Court, in and for the District of Montana, Billings Division, before the Honorable Charles N. Pray, with a jury, in the Federal Building at Billings, Montana, on November 3rd and 4th, 1947.



Whereupon the following proceedings were had and done, to wit:

The Court: No. 7779, United States vs. Ralph Melendrez, Ermelindo Escobedo and Leo Escobedo. Gentlemen, are you ready in this case?

Mr. Lamb: Yes, your Honor.

Mr. Groene: We are.

The Court: Call a jury.

The jury was regularly and duly impaneled and sworn.

(The defendant Ralph Melendrez having previously entered a plea of guilty in this cause.)

### LOUIS B. HARWOOD

called as a witness for the plaintiff, testified as follows:

In April, 1947, I was employed by the United States Indian Service, with headquarters at Crow Agency, Montana.

My chief job was the suppression of liquor among Indians. At the present time I live in Washington, D. C., and am no longer in the employ of the United States Government.

Q. Mr. Harwood, in April, 1947, was some complaint made to you concerning Ermelindo Escobedo?

Mr. Groene: Just a moment. If the court please, we object to any testimony as to any complaints being made. There is nothing here as to any claim of unlawful search or seizure.

(Testimony of Louis B. Harwood.)

The Court: Of course, he can show how this matter was set on foot or started, that pursuant to certain complaints [16] that come to him he proceeded to make an investigation. That may be shown if that is the fact. Is that what it is?

Mr. Lamb: Yes, sir.

The Court: Very well, but we will not go into the complaints or anything of that sort.

In April, 1947, complaint was made to me concerning Ermelindo Escobedo. I saw him on April 12, 1947, at Hardin, Montana, but the complaint was made to me before that time. On the 12th of April, I also saw Leo Escobedo and Ralph Melendrez. I left on the evening of April 12th, about seven p.m. I was on duty and went to Hardin, Montana. I was making regular investigations. I saw the defendants during the evening at Hardin, and, due to receiving a complaint a few days before, I watched Ermelindo Escobedo and Leo Escobedo especially. It was approximately eleven p.m. The city police officer and I were parked across the street from the Stockman Bar; that is on Third and Central Avenue in Hardin. We saw Leo Escobedo, Ralph Melendrez and another Mexican by the name of J. H. Robinson come out of the Stockman Bar. When they came out they had some paper bags in their arms. They started walking west on Central Avenue towards Railroad Street. I started up my car. I was driving and Bill Grudzinski, the other police officer, was in the front seat with me. I saw the

(Testimony of Louis B. Harwood.)

defendant Ermelindo Escobedo get out of his car, which is a station wagon, parked on Railroad Street near Central Avenue, and also near the depot. He got out of his car on the left side which, I am sure, was the middle door or middle seat in the station wagon. In a station wagon they have three rows of seats and when the others walked up, Leo Escobedo, Ralph Melendrez and Robinson, Ermelindo walked around in back of the car and got in the front seat. These parcels were put in the car and Leo Escobedo got in the car in the driver's seat and defendant, Ralph Melendrez, got in [17] one of the back seats. I continued to drive on until I came to the railroad track and I made a "U" turn in the street. Just as my car turned around in the street they were backing out of the curb and they started driving towards Third and Central Avenue, which is the highway. I continued to follow. When they came to U. S. Highway 87 they stopped at the stop sign and made a left turn and continued on driving out the highway. I followed a short distance behind them, accompanied by Grudzinski. We went out on the highway in the direction towards Billings, where the road turns off to St. Xavier, and they made a left turn on the pavement and drove on the St. Xavier road. We followed close behind for about three miles from the city limits of Hardin, and I turned my siren on and they stopped their car. Leo Escobedo was driving and when I turned the siren on he stopped immediately. When he stopped I

(Testimony of Louis B. Harwood.)

drove in behind their car, and he stopped on the right-side lane and I stopped a few feet behind their car and left my lights on. I went up to Leo Escobedo and told him I wished to search the car and that I had reason to believe there was liquor in it. Before he or anyone else could say anything the defendant Ralph Melendrez jumped out of the car. He was sitting in the middle seat on the left side. He jumped out of the car and commenced cussing the officers and was threatening me especially. Grudzinski was close behind me in front of my car and he was calling me names and threatening what he was going to do if he could get hold of me and walked toward me. I backed up and at the same time I told them all to get out of the car and get in the front of their headlights. Melendrez kept up his cussing and caused a great deal of disturbance by making these little girls in the back seat have hysterics and they commenced to scream and beg him not to start any fight. All the time he [18] was trying to get hold of me and I was telling him to get in front of the car with the other occupants who were out most of them there in front. The Escobedos were very good in obeying my orders to get out in front of the car. It was necessary for me after I told defendant Melendrez to stay back there and get in front of the car and the threats he was making, for me to hit him in the jaw with my fist. After I hit him and knocked him into the car he jumped up and made a run for me and before he reached me

(Testimony of Louis B. Harwood.)

Leo Escobedo and his brother, Manuel Melendrez, came up and grabbed hold of him and dragged him to the front of their car and held him down. It was at this point that I searched the car and found two full jugs of wine in paper bags, still intact, and another jug that was in a paper sack that had a little wine left in it. I found the wine in the back seat, clear in the back. The car was a Ford V-8, License No. 22-T1307. It was a model 1947 station wagon, Motor No. 20327. It was admitted that the car was on the Crow Indian Reservation at the time of the finding of the wine. After I seized the wine I put it in my car and I told the defendant Leo Escobedo and all of them to get in the car and to drive back to the county jail in Hardin, in which he was very cooperative all the way through. We followed them back to town.

When we arrived at the county jail at Hardin, they were told to drive around in the alley, the entrance to the Sheriff's office. We told them to get out of the car, we were going in the Sheriff's office. Roy Riley, the Sheriff of Big Horn County, came up and unlocked the door and we all went in. We did not have trouble with the Escobedos, but we had plenty with Melendrez. It was necessary for the Sheriff and I to use force to put him in a cell. There was no trouble at all with the Escobedos. They were confined to the jail [19] that night also. I told the defendant Leo Escobedo that due to the fact that I found liquor in his car on the reservation

(Testimony of Louis B. Harwood.)

I would have to ask him to forfeit the keys of the car to me, which he did, and the car was locked up that night and left in the custody of the Sheriff. Subsequently the three were arraigned before a United States Commissioner.

The jug of wine marked Government's Exhibit 1 was one of the jugs of wine which I removed from the car. Government's Exhibit 2 was one of the jugs removed from the car. The third jug, a full jug of wine, was left in charge of the Superintendent of the Crow Indian Reservation, but I do not know what became of it.

Exhibits 1 and 2 were admitted in evidence without objection.

On cross-examination Louis B. Harwood testified as follows:

At the time that I was Indian Agent, or Police Officer for the Indian Service, and about the time this incident happened there were times that cars which were forfeited were turned over to the Indian Department, to be used when the director requested it.

As to who told me that Mr. Escobedo was selling whiskey or liquor to Indians, I received an unsigned letter through the mail at Crow Agency on April 4th. I have the letter here. It was never determined just who was the writer of the letter. Previous to receiving this letter we had received complaints of the defendants bootlegging at St. Xavier. I do not remember what their names were.



(Testimony of Louis B. Harwood.)

I would say approximately two or three months after I arrived at Crow, in 1946, I started receiving complaints. I can name one of the persons, Max Bigman, who had been employed at the Crow Agency on the police force. He named the Escobedos. As to whether or not he had any evidence he just told me verbally. [20] No investigation was made other than watching the defendants. He told me there wasn't any liquor evidence. He was just telling me what he thought about it. There wasn't anything for me to base an investigation on, or make an arrest on or do anything. When I got this unsigned letter I really started in on them.

Witness was then handed an instrument marked for identification purposes as Defendants' Exhibit No. 3 and testified that it was a substantially correct representation of the location of the various buildings on one side of the main street in Hardin. Without objection Defendants' Exhibit No. 3 was admitted in evidence.

Witness continuing:

I was not looking especially for the Escobedos' car. That wasn't my main purpose for going to Hardin. As I recall, it was a Saturday night. When I first came to town I don't recall where I parked. When I first saw the station wagon belonging to the Escobedos it was parked right up here by the depot back of the bus stop. I marked Exhibit No. 3 with an X to indicate where I first saw it. At that time I was in my car with the police officer from Hardin.

(Testimony of Louis B. Harwood.)

I did not stop and park alongside of it. I had it under observation all the time until the time it was stopped on the highway on the reservation. I first saw the station wagon parked there by the depot around eleven o'clock p.m. I knew that someone was inside and I know the defendant Ermelindo Escobedo got out and got back in. I marked a Y on Defendants' Exhibit No. 3 to designate the point where I was when I saw these men come out of the Stockman and that Y is marked in front of the drug store and right across from the Stockman. When they came out of the Stockman they were walking. We were parked at the point marked Y. They came up the street on the sidewalk, crossed the highway and I started my car and drove along the [21] street slowly. I did not see the station wagon until after they came out of the Stockman. I followed them down the street and they came to the station wagon and that is where I saw Mr. Escobedo, the old man, get out of the car. I had never seen the station wagon before that time that night. I had been parked across from the Stockman about fifteen or twenty minutes. As to who I saw come out of the Stockman, I saw Leo Escobedo. I did not see the old man come out. Ralph Melendrez came out and a man, I believe he gave his name as J. H. Robinson. Melendrez was carrying two parcels and, I believe, Leo was carrying one or two small parcels. I believe Mr. Robinson was carrying one or two parcels. I did not know what was in those



(Testimony of Louis B. Harwood.)

parcels at that time, but I found out later. They were jugs of wine of the size of Government's Exhibits 1 and 2. I said Ralph Melendrez had two packages. They could have been something else. Defendant Melendrez told me verbally he bought this wine in the Stockman. He told me about eleven o'clock. I saw all of these parcels put into the car. We did not make any inquiry at the Stockman as to what they bought and what they carried out of there. The policeman and his wife were in the car when we went out and stopped the station wagon. I don't know whether I saw lots of people carrying packages or not that night. I don't remember that I told Leo Escobedo that I saw him bring a package out of the Stockman, or that he told me that he had a sack of apples and a carton of cigarettes. I don't remember any conversation like that. I searched the station wagon thoroughly. I did not make a list of what I found there. Not at the time for groceries or anything. Everything that was in the car was turned over to Manuel Melendrez. He was released that night because Ralph Melendrez was the father of the two little girls in the car. I told Manuel Melendrez, [22] brother of the defendant, to take his nieces and take care of them for the night because I would have to hold the car. I also told him to take what groceries and other stuff they had in there. I never made a list of what I got out of the car. I never got anything else but the liquor. The car is stored at Crow Agency. As to the children, I believe the old-

(Testimony of Louis B. Harwood.)

est was thirteen, a little girl. I told their uncle, Manuel, to look after them.

On redirect examination witness was asked to produce the unsigned letter and the envelope, bearing a postmark of St. Xavier, Montana, and dated April 3, 1947, which was marked for identification as Government's Exhibit No. 4. Under the objections of defendants Government's Exhibit No. 4 was admitted in evidence. This exhibit was in the following language:

"Mr. Harwood

This is from a friend this Manuel Melendrez and a man they call Slick is doing a good job of bootlegging to the Indians this Slick I have been told that the F.B.I. run him out of California for handling dupe. And Emil Escobedo is selling to the Indians If they run this Slick off the county would be better off"

WILLIAM GRUDZINSKI

called as a witness, testified as follows:

I live at Hardin and am a police officer of the City of Hardin. I was with Louis B. Harwood, Special Indian Officer, on the evening of April 12, 1947. In his automobile around eleven o'clock that night. It was in front of the drug store and right across the street from the Stockman. At that time I saw the two defendants, Ermelindo Escobedo and Leo Escobedo, near the Stockman Bar. I saw them

(Testimony of William Grudzinski.)

when they were first coming out. There were three of them came out. I am not too familiar [23] with the names; one was Robinson and two Escobedos. When they came out of the Stockman they went down towards the depot where the station wagon was parked. When they pulled out Mr. Harwood followed them back up to Highway 87. When they came out of the Stockman Bar they were carrying paper sacks. We didn't know for sure what it was, but the opinion we thought it was liquor. When they got to the station wagon the paper sacks were put into the car. We followed the station wagon out approximately three miles. The Escobedos stopped the car in response to the siren. Harwood asked the Escobedos if they had liquor in the car and they said no. He asked them to get out of the car and in front of the lights, and they did. I would say there were five or six people in the car. I am not definitely sure. After the Escobedos got out of the car Ralph Melendrez got rough and kept threatening Harwood. Harwood conducted a search of the car and found two gallons of wine and a part of a gallon of wine. He put it in his automobile and told the Escobedos to get back in the car and head back towards the court house. They drove back to the court house and the Sheriff, Roy Riley, unlocked the office and everyone went into the Sheriff's office. Ralph Melendrez was swearing.

On cross-examination witness testified that the relative that Mr. Harwood asked to look after the

(Testimony of William Grudzinski.)

children was one of the men he saw coming out of the Stockman Bar.

I saw Mr. Escobedo, the old man, come out, and Mr. Robinson. One of the Melendrez came out, but I didn't know it finally. I am not sure now Mr. Escobedo, Senior, was in the station wagon that he came out of it. I saw him go into the station wagon carrying one or two packages. They were small articles. They were not as big as the jugs of wine, but I don't know what was in the packages. Leo Escobedo was carrying packages, one or two, and they were about the size of that jug of [24] wine. Robinson was carrying one or two fair size packages. I won't say for sure that they were as big as the bottles of wine. I did not see Ralph Melendrez coming out of the Stockman at the same time. As to whether Mr. Harwood said he came out and whether he was mistaken, I am not sure of that. If Mr. Harwood testified he saw Ralph Melendrez come out of the Stockman I am not saying that he was mistaken, but I didn't see him come out. My wife was with me. I didn't say that we saw them put the articles in the station wagon from where we were parked in front of the drug store. We drove down the street. We were three-fourths of the block down the street when we saw them put the packages in the station wagon. They were walking a regular natural walk and they didn't stop anywhere. I had no warrant when I left town with Harwood. The station wagon was stopped, but I didn't ask them if they had any liquor. There were several

(Testimony of William Grudzinski.)

kids in the car. I didn't go in the car when the search was made and I don't know what was in the car. It was approximately around eleven that night when I saw the packages put in the station wagon. I don't remember whether it was a dark night or not. That night was the first time I had ever seen the defendant, Ralph Melendrez. I recognize him and he was not one of the men that came out of the Stockman. Mr. Harwood made the arrest and I was merely accompanying him as an officer generally.

### MAX BIGMAN

was called as a witness and testified:

At the time of this case I was Chief of Police at Crow Agency. I have been a peace officer on the Crow Indian Reservation for about four years. During the time that I was Chief of Police at Crow Agency complaints were made to me concerning the Escobedos selling liquor to the Indians on the Reservation. My information came mostly from Indians and Mr. Ford, who lives at St. Xavier, was one of them who spoke to me about it two or three times.

On cross-examination the witness continued: [25]

The first reports I had about it was a year ago this summer off and on. I did not make any investigation. I reported it to Harwood. I do not know myself of any sales of liquor by the defendants.

Witness was handed Government's Exhibit No. 4, the anonymous letter, and testified:

*It haven't no name on it.*

At this time the government rested



The first witness for the defense was

PAUL SHALLER

who testified substantially as follows:

I reside at St. Xavier. I am a fieldman for Holly Sugar and I have a store. I have lived there for about fourteen years. I have known Leo Escobedo and his father for seven years. Their occupation during that time has been raising beets. I have had occasion in my work to come in contact with them. They are very good beet raisers. They have been making money out of their beets right along. I have never heard anyone remark about these men being engaged in the selling or giving liquor to Indians. The reputation of both of these men in the vicinity where they live for truth, honesty and being law abiding citizens is good.

On cross-examination witness testified:

The Escobedos live about four miles south of St. Xavier. I am not very well acquainted with Ralph Melendrez. He came there last spring. He did not live with the Escobedos. He lived in the St. Xavier colony house of the Holly Sugar and then he moved on a ranch north of St. Xavier. I saw the Escobedos during the beet season about once or twice a week, other times about once a week for about five minutes at a time. In addition to their own land and work they irrigate for Mr. Hawks. I don't know what they do in their spare time. A beet grower doesn't usually have too much spare time. They come to my store once in a while and do some trading there.

F. M. LIPP

was called as a witness: [26]

I live at Hardin, Montana, and am in the Big Horn Bank there. I have known the defendants Leo Escobedo and his father about six or seven years, and they have transacted business with me. I know where they live. In their transactions with my bank they have substantial amounts of money. I know they have made money. I know their reputation for truth, honesty and being law abiding citizens is good.

On cross-examination witness testified:

They are indebted to the bank in substantial amounts at the present time.

CARL McGARRITY

was called as a witness and testified substantially as follows:

I live at St. Xavier, where I run a general store and I am the Postmaster. I have been there about twenty-five years. I have known Leo Escobedo and his father about six years. They are beet farmers and I see them quite frequently. I have never heard any reports about either one of these defendants engaged in selling or giving liquor to Indians. I know their reputation for truth, honesty and being law abiding citizens and it is very good.

On cross examination witness testified:

They trade at my store and are indebted to me at the present time.

## CLYDE HAWKS

was called as a witness and testified:

I live about eight miles south of St. Xavier. I have lived there since 1931. I am a farmer and rancher. I know Leo Escobedo and his father. I have known them approximately seven years. They lease and farm land belonging to me. In addition to raising beets, in their spare time they work for me by the day or month. I would say they are quite busy all the time. Their income has been very substantial. I get around St. Xavier; I stop in there and buy groceries or gas. I have never any reports coming to me that either one of these defendants were engaged in selling or giving liquor to Indians. Their reputation for being truthful honest men and law abiding citizens is good.

On cross-examination witness testified that he countersigned the Escobedo note.

## RALPH MELENDREZ

called as a witness for defendants, testified substantially as follows:

I have a small place of my own north of St. Xavier. I came to St. Xavier about the 17th day of March. Before that I lived at Denver. I lived at the colony house at the Holly Sugar Company. At that time I did not know Leo Escobedo, but I had met the old man. I met him on a prior visit a year ago last April. As to the incident at Hardin, on the 12th day of April, we were out spreading fertilizer



(Testimony of Ralph Melendrez.)

and Mr. Escobedo's truck broke down and I was employed to repair the truck. They came over to St. Xavier that afternoon and I found it necessary in order to repair the truck to get some new parts, and that was the purpose of the trip to Hardin. The Escobedos came over to St. Xavier in their station wagon and we left St. Xavier about four o'clock that evening. In the station wagon there was Manuel, my brother, Leo and Mr. Escobedo, four of my children and myself. The children were 7, 8, 10 and 13 years of age, respectively. I took them in to buy them some shoes. The station wagon first stopped at Hardin between Ricker's drug store and the Big Horn Bar. I went to the garage. I marked a little zero on the plat at the place where the car was parked. I gave my daughter a twenty-dollar bill so that she could buy shoes for herself and the other kids. We went to the Ford Garage, the Escobedos and myself. The parts were ordered. When I left, the Escobedos were still at the garage. I went to the liquor store and I bought three half gallons of wine. I had a permit and I signed the slip. I bought the wine between five-thirty and six o'clock. The liquor store is not on the main street. I put it in the station wagon on the floor in the back seat. [28] The wine was in separate sacks. Later on I met Pete Autobee and Robinson. We went to the Farm Cafe and had something to eat. I got one of the bottles and took it in and we drank wine in there. After we finished with the wine I put the wine bottle back in the car, in the back seat on the floor. There are three seats.

(Testimony of Ralph Melendrez.)

Anyone getting in the driver's seat could not readily see the wine. I saw the Escobedos after that, about eight o'clock. I met them on the corner. They were coming from the Big Horn Bar. I was with them from that time on until we were ready to go home. As to Mr. Harwood's testimony that I came out of the Stockman with two other fellows, carrying packages, and that I told him that I bought the wine and got it in the Stockman, that is not true. I was not in the Stockman about the time we started to go home that night. I was with Mr. Escobedo in the Arcade. We had several beers there before we left. The Arcade is across the street from the Hardin Hotel. I am marking the plat with an A. We did not go to the Stockman at all after we stopped at the Arcade. As to whether or not the car was moved, I don't know. Leo was the one driving. I didn't see him from eight o'clock on until we were ready to go. Mr. Escobedo said it was about time to go home. I did not know the station wagon was parked by the depot, but I walked down with the old gentleman and Pete Autobee. The children were there in the car. They were asleep. They had the back seat occupied and they had their packages in there, too. We were in the station wagon just a minute or two when the rest of the party came. I took it upon myself to put the wine in the station wagon. I did it without Mr. Escobedo's permission and he didn't know a thing about it and I said nothing to him. I was taking it out for my brothers. There are five or seven out there and they want a drink occasion-

(Testimony of Ralph Melendrez.)

ally. I never said anything to Leo Escobedo at any time about having wine in the car and as far as I know they had no knowledge [29] or any reason to suspect that there was wine in the car. I did not know anything about the Indian liquor laws at that time. I did not know that it was a crime against the federal laws to transport liquor into the Indian Reservation and for that reason I never thought anything about it. When we got ready to leave we all got in the car and went up Highway 87 and turned left on the St. Xavier road and went about a mile and a half south of the tracks. When Harwood blew the siren Leo drove off to the side and stopped. Harwood got out of the car and ordered us all out and he said he wanted to search the car and I wouldn't leave him. I was drunk and we had a scuffle and he knocked me down a couple of times. After Harwood searched the car he ordered Leo to drive back to the court house. Harwood went out and rounded up the other officers. When I was arraigned I entered a plea of guilty of having this wine on the Reservation. At this particular time when I came back to Montana, I didn't know Leo for he was in the service. I didn't stay with the Escobedos and I was simply employed to repair the truck.

On cross-examination the witness testified:

I had been in California before I moved to Denver. In the spring of 1946 I came to the Crow Indian Reservation on a two-weeks' vacation. My folks had been in that valley since 1939, and I came

(Testimony of Ralph Melendrez.)

up to see them. After that I went back to California. I then went to Denver, and came up here in the spring. I have never made any other visits up here. I knew it was against the law to sell liquor to the Indians, but I didn't know it was against the law transporting it for your own use. It is approximately twenty-five miles from St. Xavier to Hardin. When we went to Hardin, at the garage I left a list of parts that were needed, and the Escobedos stayed there with the garage man and I went out and got this wine. I had the wine in three separate sacks. No one was with me when I bought them. [30] Then I walked back to the station wagon and put them on the floor between the second and third seats. I don't know where the Escobedos were. I didn't see them until about eight that evening. I would say it was around 5:30 to 5:45 when I put the jugs of wine in the car. The truck parts the Escobedos ordered we could not get that night because they had to call Billings and Sheridan. The Escobedos stayed to get the parts they were just ordering and there was a ring gear and other parts that they could not get so they decided to let it go until they could get it all. There were no packages in the car when I put the wine in. I waited in the car. I don't know where the Escobedos were. I have never asked them since. I suppose they were at some bar drinking. The old man drinks. Leo doesn't drink. I didn't go around the bars looking for them. I didn't sit in the car and drink any wine. My children came and I stood there until I met Autobee and we went into the

(Testimony of Ralph Melendrez.)

Farm Cafe. We didn't have any special time to go back home. Robinson and Autobee came up to the car and we went to the Farm Cafe at that time and had a cup of coffee and sandwiches. I did not take one of the jugs of wine with me then. It was after we had our coffee. Then I came out and got one of the jugs. The children were in the car. At that time there were some packages in the car, the children's shoe packages. They put on their new shoes and put their old shoes in the packages. The four children were sitting in the back seat. I opened the door and reached in and got the jug of wine.

Q. So then you went back in the cafe and you and Robinson and Pete drank this gallon of wine?

A. Well, there was two other fellows.

Q. And how long were you in there?

A. Oh, hour and a half, hour and fifteen.

Q. And then you went out looking for the Escobedos?

A. No, sir, I went out on the street and they was [31] coming from immediate at the time the Mission Inn and was coming across the street I suppose from the Stockman; it is located across the street.

Q. They were coming from the general direction of the Stockman Bar?      A. Yes.

Q. And this was about what time?

A. Oh, eight o'clock, eight fifteen.

Q. And you had been in the cafe all the time up until the time you saw Escobedo coming from the Stockman Bar, is that right?      A. Yes.



(Testimony of Ralph Melendrez.)

Q. Did you see them as soon as you walked out the door of the Farm Cafe?      A. No.

Q. How long were you out in the street before the Escobedos came along?

A. I wasn't out there very long, not over ten minutes.

Q. Did you walk out of the Farm Cafe and walk up toward the Stockman Bar?

A. No. Stockman, no, not just then. We were out there talking a while.

Q. Did Robinson and this Autobee come out of the Farm Cafe, too?      A. Yes.

Q. And the three of you stood there on the sidewalk in front of the Farm Cafe, is that right?

A. Yes, we were there approximately ten minutes and we saw them coming by the Mission Inn from the direction of the Stockman.

Q. You saw them near the Mission?

A. I saw Mr. Escobedo, the old man senior, with another man.

Q. With another man?

A. With Rodrico Mirmiontez.

Q. Where was Leo?

A. I don't know where Leo was at. [32]

Q. Now I want to get this straight. When you and Robinson and Autobee walked out——

A. Yes.

Q. Walked out of the door of the Farm Cafe you stood right there on the sidewalk for ten minutes?      A. Yes.

(Testimony of Ralph Melendrez.)

Q. Until you saw Escobedo senior?

A. Yes, sir.

Q. And another man near the Mission Inn coming from the general direction of the Stockman Bar, is that correct?      A. Yes, sir.

Q. And then what did you do when you saw Mr. Escobedo senior coming from up the street?

A. We walked toward them.

Q. You walked up toward them?

A. We met them on the corner of the Mission Inn.

Q. You went up to near the Mission Inn?

A. Yes.

Q. And then what did you and Mr. Escobedo do?

A. Well, from there we went to the Arcade.

Q. You and Mr. Escobedo?

A. About eight thirty, around eight forty-five, eight fifteen or eight thirty.

Q. Now are you positive that you didn't do any other thing from the time you walked out of the Farm Cafe until you got to the Arcade with Mr. Escobedo?      A. Yes.

Q. Positive?      A. Yes.

Q. Positive, and everything you have testified is just as true as the statement you just made. You are positive you didn't do anything else, is that right?      A. I didn't do anything else.

Q. So you went over to the Arcade Bar and you and Mr. Escobedo engaged in drinking by the hour, the Escobedo senior?

(Testimony of Ralph Melendrez.)

A. We had three, maybe three or four beers.

Q. And you were in there from eight fifteen, eight thirty——

A. Eight thirty to eleven o'clock. [33]

Q. And drank three or four beers?

A. Drinking beer and conversation.

Q. These little short glasses of beer or bottles?

A. No, we were drinking bottles.

Q. You got pretty drunk?

A. Yes, sir, plenty drunk, mixed up that wine and beer and got plenty drunk.

I don't think Mr. Escobedo had a pretty good load on. He had some on, of course. Autobee was in the Arcade with us. When we left the Arcade Mr. Escobedo and Pete Autobee went with us. The car was moved during the time we were in the Arcade. I don't know where Leo was. When we got back to the car I got into the middle seat with Pete and Robinson. There were no packages of groceries or anything of the sort because Leo brought the packages afterwards. He brought them when he came about two minutes after. Escobedo Senior got into the front seat. My brother, Manuel, and Leo Escobedo got in the front seat. Leo and Robinson and my brother, Manuel, came down the street from the Stockman Bar. Leo was the only one who had any packages. He had a bag of apples and a carton of cigarettes. He took his driver's position behind the wheel. I don't know where he put the packages, but he was carrying the packages and put them in the car.



## WILLIAM GRESS

a witness, was called and testified substantially as follows:

I live at Hardin. I am a bartender at the Stockman Bar. I have been tending bar there for the last four years. In April, 1947, my shift was from eight until two at night. I am acquainted with Leo Escobedo and his father. On a Saturday night, some time in April, 1947, Leo Escobedo came into the Stockman, and handed me a package, a sack which looked to me like apples, and I set it behind the bar. He asked me to save it for him when he goes home. He came in later and got the sack. [34] There were a couple of men with him. There was a carton of cigarettes laying on top. I gave it to them and they went out.

Witness was then handed a half gallon bottle of wine, marked Government's Exhibit No. 1, and further testified:

We never sell, we never have half gallon wine in the last four years. I would say that this half gallon of wine did not come out of the Stockman. We never had any like that.

On cross-examination witness testified:

It could have come out of the place, but I didn't sell it to them. They might have carried it; I didn't see it.

## PETE AUTOBEE

a witness, was called and testified substantially as follows:

I live in Billings. I am a moulder at the foundry. I know Leo Escobedo, Ermelindo Escobedo, Ralph Melendrez and Manuel Melendrez. I was in the car when the car was stopped on the Crow Indian Reservation on April 12, 1947. I met Ralph Melendrez about six fifteen and we went into the Farm Cafe. I went in there and then he came in bringing a half gallon of wine and we had a few drinks. After that we walked out and stood around the street in front of the Farm Cafe for about ten minutes and then we met Mr. Escebedo and we walked over to the Arcade. I mean the old gentleman. The three of us went into the Arcade. It was probably fifteen minutes to seven before we got there. We stayed there maybe an hour or a half hour. Then I came out and went in the Mission pool hall and asked this gentleman if he would give me a ride home. I lived at St. Xavier. He said yes, to wait until he got ready to go home, so I waited until the time they went home and then I got into the car and went home with them. I got into the station wagon right there in front of the depot. I walked down the street with Mr. Melendrez and we got in the car and then the rest of them began to come in and then we left. Leo and the old man were in the front seat. We started out of town and we got past the tracks when the officers caught

(Testimony of Pete Autobee.)

up with us, stopped the car and made us get off there. They searched the car and took us [35] back. After they turned me loose we got a man to take us home. I was with Manuel and Ralph's children. The people that took us back took the kids, too.

On cross-examination witness testified:

After we had the drinks in the Farm Cafe, just me and Mr. Melendrez walked out and stood in the front of the Cafe. We stood there about fifteen minutes and then we walked over to the Arcade. We didn't go anywhere else; just met Mr. Escobedo. It was at the Arcade that I asked Mr. Escobedo for a ride.

### MANUEL MELENDREZ

a witness for the defendants, testified substantially as follows:

I live at St. Xavier. I am twenty-nine years of age. I have lived there since 1939, up until January, 1942, when I enlisted in the Army. I was in the service three and one-half years, with the Eleventh Air Force in the Aleutian Islands. I was honorably discharged. I know Leo Escobedo and his father. I met them in the fall of 1939. I have been in the court room and heard some testimony about an occurrence on April 12th, 1947. I was in the station wagon when it came to Hardin, and when we got to Hardin we stopped in front of the Big Horn Inn. The Escobedos went to the Ford Ga-

(Testimony of Manuel Melendrez.)

rage to order parts for the truck. While they were there I went to Miles and Ulmer to get tractor parts. From there I went to the Ford Garage where Mr. Escobedo and Leo were talking about having the radio fixed. From there Leo and I went to the Hardin Club. That is across the street from the court house. I don't know where my brother was. We left there about nine fifteen. Then we went back to the car and took a friend of Leo's by the name of Leonard to the Hill Top. That is a club northwest of Hardin. When we came back our parking place was gone and we drove around a while and parked in front of the depot. We were sitting in the car at the time that Mr. Harwood and the police officer parked beside us. I got out of the car and went up to the Arcade and [36] told Mr. Escobedo where the car was. I also told him that Leo and I would get the packages at the Stockman. Robinson went with us. My brother was not there. Leo had a sack of apples and a carton of cigarettes at the Stockman. I carried the cigarettes and he carried the apples. We did not carry any wine out of the Stockman. I didn't even know the wine was in the car until the officers had found the bottles. If I had known they were in the car I would never have left Hardin with them. Mr. Harwood and the officer were over there watching us. I had no reason to apprehend or suspect that the bottles were in the car. Leo never put anything in the car as far as I know and he and I had nothing to drink that eve-

(Testimony of Manuel Melendrez.)

ning. As far as I know Mr. Escobedo did not put any wine in the car. When we came down to the station wagon with the cigarettes and apples, Leo handed them to his dad, who was in the front seat, and his dad handed them back to either Ralph or Pete or Mr. Robinson, who took the packages and set them in the back on the last seat. Leo got in the driver's side and I got in on the other side. There were three of us in the front seat. When the officers stopped the car Mr. Harwood asked me if there was any liquor in the car and I told him there was not and he searched me. They searched the car and found the wine and ordered us back to Hardin. There was quite a scuffle there between Ralph Melendrez and the officers.

On cross-examination the witness testified:

At the sheriff's office my brother started telling the police officer that he could whip him and they got to scuffling. Then the sheriff came and they finally got Ralph into the cell. At the time I went to tell Mr. Escobedo about moving the car I knew they were at the Arcade because I walked by and saw them in there and I told Leo.

### LEO ESCOBEDO

called as a witness, testified substantially as follows:

I live at St. Xavier, Montana. I was born in Texas. I was in military service in 1945, in Okinawa. I was in twenty-two [37] months. I was a Military Policeman. I received an honorable dis-

(Testimony of Leo Escobedo.)

charge. Mr. Escobedo, Senior, is my father. There are nine children, all born in this country and all citizens of this country. With reference to what occurred in Hardin on April 12th, we went to Hardin to get some parts for our truck. My father owns the station wagon. We bought it, I believe, in March, about a month before this happened. We had to pay \$1900.00 for it. We have been engaged in business down there raising beets and general farm work and made pretty good money. I have never sold or given away any liquor to an Indian. I didn't know anyone was making such a claim until we had this trial. After we left the garage Manuel and I went up to the Hardin Club. My father stayed at the garage. We first parked the station wagon right by the Farm Cafe and the Big Horn Inn, at the point where a little circle is marked on Defendants' Exhibit No. 3. It stayed there until about nine fifteen, nine thirty. I met a friend down at the Hardin Club who wanted me to take him down to the Hill Top, and we did. When we came back there was no place to park, so we parked in front of the depot. Manuel Melendrez was with me. I don't know where my father was at that time. After we parked at the depot Manuel got off the car and made a round while I was in the car. When he came back he said that my dad was in the Arcade. While we were in the car we saw Harwood and the policeman. They were parked right alongside of us. I know what the law is about taking liquor into the Indian Reserva-



(Testimony of Leo Escobedo.)

tion. I did not put any wine or any other liquor in the car that night. I didn't know there was any there until they caught us out on the highway. I came out of the Stockman that night just before we left, and Manuel Melendrez and Jim Robinson were with us. I went in there to get a package I left there earlier in the evening that I bought, a sack of apples and a carton of cigarettes. I saw Mr. Bill Gress, the bartender, while I was in there. Manuel carried the carton of cigarettes and I carried the sack of apples. Mr. [38] Robinson had no package. I gave the sack of apples to my dad and he handed them back. I don't know who he handed them back to. I have never seen the apples or the cigarettes since. No one gave my dad a receipt for the car or its contents. When they stopped the car they asked if we had any liquor in the car. I told them I didn't have any and I had no reason to think otherwise. There were three in the front seat, and there is a seat in the middle and one in the back and there are side doors. I had no occasion to go in the back of the station wagon and look for any packages.

On cross-examination the witness testified:

When my father bought the station wagon he paid around \$700.00 cash. At the time it was seized there was about \$1400.00 due, to some finance company. It is down to \$800.00.

## ERMELINDO ESCOBEDO

testified substantially as follows:

My name is Ermelindo Escobedo. I am seventy-four. I have lived in the United States since 1910, and in this section the last seven years. I have lived in St. Xavier since 1940. I own the Ford station wagon. During the time I have lived at St. Xavier I have never sold or given any liquor to an Indian. I heard the testimony in the trial and I heard that the officers found two bottles of wine and a part bottle of wine in my station wagon. The first I knew of it was when Mr. Harwood picked it up. I did not know the wine was in the car before that. No one told me the wine was in there. I had no reason to believe the wine was in there. I did not put any wine in the car and I saw no one put the wine in the car.

On cross-examination the witness testified:

That night we drank a little. Just little glasses in the beer. We had a little wine that night, yes. That was in the Arcade. As to whether or not I was around with Ralph Melendrez most of the night I can't see that putting wine into my car at [39] all. He come in the Ford Garage, come back myself and treat and Ralph he told me, Emil, you ready for part. Not yet. That is, he asked me if I had bought the parts. I told him no, not yet. He asked me if he bought the parts and he said no, Ralph, not yet. He said you want a bottle of beer and he don't care. Me ask him that is okay, let's go.

(Testimony of Ermelindo Escobedo.)

Mr. Lamb: When he says "he," he means "I."

We stayed quite a while in the garage, called up Billings for parts. I think it was about four or five o'clock when Ralph Melendrez asked me if I wanted to go over and have a drink. Maybe it was five-thirty or six. He gave me twenty dollar bill for the little girls to go buy stockings and shoes and then he made the order what was needed to fix the truck, and then he asked me if I wanted to go for a drink. Then he said he would go back to town and look for his kids and I stayed in the garage. I left the garage after a while, Leo and I. After a while I went back with Manuel and we were all three in the garage. As to when we had our first drink, Arcade and Mission and Arcade last drink. I had my first drink with Ralph about ten-thirty, I think. I had the first drink in the Mission. I was not up at the Stockman. I met Ralph in the street near the Mission Bar and we went in and then to the Arcade. We then went to the car and started home.

On rebuttal Roy Riley, Sheriff of Big Horn County, testified, but not as to facts involved here.

#### LOUIS B. HARWOOD

was recalled and testified substantially as follows:

I was parked earlier in the evening by the station wagon, but I was not watching the occupants of the car.

At this point, both sides having rested, a motion to dismiss was made as follows:

“Mr. Groene: Comes now the defendants Ermelindo Escobedo and Leo Escobedo at the close of the Government’s case [40] and move the court for a verdict of acquittal on each count of the information upon the following grounds and for the following reasons. Count one is the count charging the defendants with introducing into the Crow Indian Reservation wine. And count two charges the defendants with introducing into the Crow Indian Reservation wine. We submit, if the court please, there is no proof in the case whatever as to the defendants named ever having had possession of the wine in question. Even if you assume from section 245 of the code that possession is prima facie evidence, they haven’t shown the possession, and even if they had shown possession, it is sufficiently rebutted of course in this case to place back on the Government the burden to show that the wine was actually in the possession of these defendants. As I see it there is no proof in the record whatever. The testimony of the officers for the Government shows absolutely nothing. The only thing they have is the testimony of Ralph, is the admission of Ralph Melendrez to Mr. Harwood after the car was brought in that he bought the wine in the Stockman. There is absolutely no proof whatever that these defendants ever bought any wine or ever put any wine in this car, and this is a criminal case and the Government must prove the guilt of these defendants beyond a reasonable

doubt and we submit there is no proof in the record.

Mr. Lamb: Well, if the court please, of course the meaning of possession is rather a broad meaning, control of, to possess, and to exercise or be able to exercise control over the wine in question. In addition in the second count, or in the first count being charged with the introduction of the wine upon the reservation, Leo Escobedo was the driver of the automobile in which the wine was seized and the driver of that car would have then be in control of and in possession and was in the act and did introduce onto the Crow Indian Reservation the wine as charged in this indictment, and that particular fact is entirely unrefuted and in fact is admitted by the witnesses for the defense. Of course, in this particular case it is a question of [41] fact for the jury to determine whether in fact the defendants were connected with the placing of the wine in the car and whether or not they had knowledge or should have known that the liquor was in the car at the time that it was introduced and possessed upon the Crow Indian Reservation by these defendants.

The Court: Well they were seen bringing these packages out. They testified—was it Mr. Harwood testified to the bringing of the packages out?

Mr. Lamb: Both he and the other officer.

The Court: And, of course, that made them think they were placing packages of liquor in the car and bringing packages of liquor to the car. And the fact that they were all drinking and having a time of it, especially the elder Escobedo and the others, would look as if they were drinking to-



gether and having a night of it at any rate up until some eleven o'clock at night. There are so many circumstances there. Of course, it is a matter to put up to the jury for them to say whether they believe beyond a reasonable doubt that the circumstances are sufficient to draw them into the review of the testimony that the defense has submitted here, whether they have that belief that either of the Escobedos knew of the presence of the liquor in their own car after putting in the evening together and having a time of it and being seen depositing packages in the car. Those are circumstances now that and as the District Attorney says, Leo Escobedo was driving the car and he had control of it and supposedly would know what was going on, who is in it and what is in it, and what these packages were that were being deposited in the car. Now I don't think it is a very strong case to tell you the truth, but what the jury will do with it is another thing, but it seems to me there is enough here. If they were going to church and coming back from church and got in the car and started off, you wouldn't think so much about it, but where they were having a drinking bout together and they were all full evidently. [42]

Mr. Groene: Except the boy who was driving the car and the other one who didn't have a drink.

The Court: He didn't have a drink and nobody testified he had a drink. It was fortunate the driver was sober but apparently the rest of them were having a time of it, but with the packages being deposited there there's circumstances might confuse



the jury. The owner of the car and the other Escobedo ought to have known about it that they were there and should have known what they had in the trunk. I rather think I will let the case go to the jury, but as I said, I think it is a weak case and my notion would be that the jury won't do very much about it, but now we will have to let it go that way."

The court duly instructed the jury and thereafter the jury returned verdicts of not guilty as to both defendants.

[Endorsed]: Filed Feb. 3, 1948. [43]

---

Thereafter, on February 18, 1948, the Decision of the Court was duly filed herein, being as follows, to wit:

[Title of District Court and Cause.]

### DECISION

A libel of information was filed herein for the forfeiture of the above described automobile under the Indian Liquor Laws (25 U.S.C.A. Secs. 246, 247, 248). An answer, in which a lien holder joined, was filed by the owner of the automobile denying any knowledge of the presence of intoxicating liquor in his automobile while being driven on the Indian Reservation, as alleged.

The owner, Ermelindo Escobedo, was occupying the front seat of his car, which his son, Leo Escobedo, was driving, when a special officer of the United States Indian Service intercepted the car

while being driven within the boundaries of the Crow Indian Reservation, in the District of Montana, and found near the back seat of the car, which was said to have been occupied by four children of the passenger, Ralph Melendrez, a friend of the owner, a quantity of wine, consisting of three jugs in all, of which the passenger, Melendrez, who occupied the second seat, claimed ownership.

The persons above mentioned reside on the Indian Reservation, and had driven to Hardin, Montana, to procure parts for the repair of a truck belonging to the owner of the car in question. After transacting their business, they visited some of the bar rooms in Hardin, and as the evidence shows, had been doing considerable drinking, in which it also appears that the son, the driver of the car, did not participate. To the criminal charge Melendrez entered a plea of guilty to the introduction and possession of intoxicating liquor on the Indian Reservation; the two Escobedos were tried by a jury and found not guilty of the same criminal charge. It was agreed that the testimony taken in the trial of the criminal case might be used in the civil case now under consideration. [45]

On the subject of knowledge on the part of the owner of the car the Government relies strongly on the testimony of Melendrez and Autobee developing circumstances showing that while the former was carrying the jug of wine back to the car the owner was with him, and could have seen the wine placed in the car; and, since they, the owner and Melendrez, had been drinking together at the Ar-

cade bar, and were both going together towards the car with the latter carrying the jug of wine from which the contents had been nearly emptied, the responsibility was on the senior Escobedo to know whether the wine was in the car; he must have seen Melendrez carrying it towards the car; they were both going to the car to drive away at the time, which was then about eleven o'clock at night.

Melendrez had already pleaded guilty to the criminal charge when he was called as a witness on behalf of the Escobedos, and the testimony relating to the walk to the car with the wine was developed by the District Attorney on cross-examination. This court is of the opinion that the testimony of Melendrez and Autobee in regard to the wine drinking in the cafe, with the jug in possession of Melendrez, considered in connection with the surrounding circumstances, taking into account the reiterated positive statements made by Melendrez and Autobee as to what they did, where they went, and who they met, on leaving the cafe, brings the senior Escobedo in close contact with the jug of wine that was returned to the automobile. Aside from that view of the evidence, the decision written by Circuit Judge Wilbur, when he was Senior Judge of the Circuit Court of Appeals for this Circuit, in which the other Judges concurred, under the facts disclosed in this case, would require the court to order a decree of forfeiture of the car in question, as prayed for in the libel of information filed herein. *United States v. One Chevrolet coupe*

automobile, C.C.A. 9th Circuit, 58 Fed. (2) 235, [46] and cases cited therein.

The evidence shows that the intoxicating liquor, three jugs of wine, was found by the officer near the rear seat of the automobile, and that none of the parties above named were in the car at the time of the actual seizure, having been required by the officer to step out, for the purpose of the search. As contended by the District Attorney the parties were engaged in a joint venture in their auto trip to Hardin; they were visiting drinking resorts about town for several hours before leaving, and it was undoubtedly the duty of the owner of the car to investigate and determine whether there was any intoxicating liquor near the back seat, or at any other place in the car, before driving upon an Indian Reservation; if the owner had looked, he would have seen the liquor where the officer found it a few minutes later. There is a difference in the statements of Officer Harwood and Officer Grudzinski in respect to the identity of the persons coming out of the Stockman's at about eleven o'clock that night with bundles done up in paper; one said Melendrez was one of the three coming out of the bar and the other said he was not, but irrespective of whether the wine was being brought to the car at that time, or whether it was deposited in the car several hours before, as stated by Melendrez, the three jugs of wine were found in the car by the officers on the Indian Reservation. Other witnesses explained what was being brought from

the Stockman's about eleven p.m., just before leaving for St. Xavier; they said the bundles seen by the officers were a sack of apples and a carton of cigarettes. Melendrez said he did not know about the Indian liquor laws, or that it was an offense to take liquor on an Indian Reservation; if that is true, then why did he feel obliged to conceal the three jugs of wine from his drinking companions? There seems to be an inconsistency here which has not been explained. [47]

On cross-examination of Officers Harwood and Max Bigman, it was developed that several complaints had been made to them about alleged bootlegging activities of the Escobedos, and that the former had received through the mail an unsigned letter of complaint in that respect. All of this kind of testimony consisted of rumor and hearsay and could have been excluded from the case, and while it is not evidence here, and was not considered as such, it discloses the information received by the officer upon which he acted and which resulted in the search and seizure of the automobile in this case.

The court has examined with care the able argument presented by counsel for defendant but can find therein no reasonable application to the facts under the law applicable to this case. In view of the foregoing, the decision must be for the plaintiff, and it is so ordered.

CHARLES N. PRAY,  
Judge.

Thereafter, on March 27, 1948, Notice of Appeal was duly filed herein, being as follows, to wit:

[Title of District Court and Cause]

### NOTICE OF APPEAL

Notice Is Hereby Given that Ermelindo Escobedo and Leo Escobedo, libelees above named, hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the Order, Decision and Judgment entered in this action on the 18th day of February, 1948.

Dated March 23, 1948.

/s/ MERLE GROENE,

Attorney for Appellants.

Service of the within admitted and a copy had this 23rd day of March, 1948.

JOHN B. TANSIL,

United States Attorney,

FRANKLIN A. LAMB,

Assistant United States  
Attorney.

[Endorsed]: Filed March 27, 1948. [50]

---

Thereafter, on April 8, 1948, Stipulation as to Record on Appeal was duly filed herein, being as follows, to wit: [51]

### STIPULATION

It is hereby stipulated and agreed by and between the parties hereto, by their respective counsel, as follows:



1. That prior to the trial of the criminal action it was stipulated and agreed by and between counsel, with the approval of the District Judge, that the evidence in the criminal case would be considered as the evidence in the civil case.

2. That the foregoing, consisting of 42 pages, in addition to this one, and pursuant to Subdivision (f), Rule 75 of the Rules of Civil Procedure, shall be considered as the complete record of the parts to the record, proceedings and evidence to be included in the record on appeal and as such may be certified to by the clerk of the above entitled court as the transcript of the record on appeal.

3. That heretofore and within the time allowed by law appellants duly filed in this court their bond and supersedeas on appeal.

Dated this 7th day of April, 1948.

JOHN B. TANSIL,  
United States Attorney,

By FRANKLIN A. LAMB,  
Assistant United States  
Attorney.

MERLE GROENE,  
Attorney for Libelees and  
Appellants.

[Endorsed]: Filed April 8, 1948. [52]

CLERK'S CERTIFICATE TO TRANSCRIPT  
OF RECORD

United States of America,  
District of Montana—ss.

I, H. H. Walker, Clerk of the United States District Court for the District of Montana, do hereby certify and return to The Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, that the foregoing volume consisting of 53 pages, numbered consecutively from 1 to 53 inclusive, constitutes a full, true and correct transcript of all portions of the record in case Number 953, United States of America, Libelant, versus One 1947 Model Ford V8 Station Wagon Automobile, et al., stipulated by the parties as the record on appeal therein, as appears from the original records and files of said Court in my custody as such Clerk.

I further certify that the costs of said transcript amount to the sum of Nine and 50/100ths (\$9.50) Dollars, and have been paid by the appellants.

Witness my hand and the seal of said Court at Great Falls, Montana, this 12th day of April, A.D. 1948.

[Seal]                      H. H. WALKER,  
Clerk, U. S. District Court, for the District of  
Montana.

By /s/ ELIZABETH C. McKEE,  
Deputy Clerk. [53]

[Endorsed]: No. 11899. United States Circuit Court of Appeals for the Ninth Circuit. Ermelindo Escobedo and Leo Escobedo, Claimants of One 1947 Model Ford V8 Station Wagon Automobile, Appellants, vs. United States of America, Appellee. Apostles on Appeal. Upon Appeal from the District Court of the United States for the District of Montana.

Filed April 16, 1948.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

United States Circuit Court of Appeals  
for the Ninth Circuit

No. 11899

UNITED STATES OF AMERICA,

vs. Libellant,

One 1947 Model Ford V8 Station Wagon Automobile, Motor Number 20 327, bearing Montana 1947 License Number 22-T1307, together with its tools, parts, accessories and appurtenances (Seized from Ralph Melendrez, Ermelindo Escobedo and Leo Escobedo),

Libelees.

APPELLANTS' DESIGNATION FOR  
PRINTING RECORD

Appellants herein hereby designate the entire record as certified by the Clerk of the United States District Court to be printed by the above entitled Court, and declare that it is the record relied upon by appellants herein on this appeal.

Dated this 27th day of April, 1948.

/s/ MERLE GROENE,

Attorney for Libelees and Appellants Ermelindo Escobedo and Leo Escobedo.

Service of the within admitted and a copy had this 27th day of April, 1948.

/s/ JOHN B. TANSIL,

United States Attorney,

By /s/ FRANKLIN A. LAMB,

Asst. U. S. Atty.

[Endorsed]: Filed April 29, 1948.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO RELY ON THIS APPEAL

That the District Court erred in rendering judgment against libelees and appellants Ermelindo Escobedo and Leo Escobedo in that there is not sufficient evidence to justify the findings or judgment, and the order, decision and judgment are not supported by the evidence and are contrary to law in the following particulars:

1. That there is no evidence in the record to support a finding by the Court that appellants, or either of them, had any knowledge whatsoever that the automobile in question contained any wine at the time it entered the Indian Reservation;
2. That appellant, Ermelindo Escobedo, being the owner of the car in question, and being wholly without any knowledge or notice whatsoever of the presence of wine in the said automobile when it entered the Indian Reservation, had no intent to violate any law of the United States, and the forfeiture of his automobile is contrary to law and equity;
3. That the order, decision and judgment is contrary to the evidence herein;

4. That the order, decision and judgment is contrary to law and the principles of equity.

Respectfully submitted,

/s/ MERLE GROENE,

Attorney for Libelees and Appellants Ermelindo  
Escobedo and Leo Escobedo.

Service of the within admitted and a copy had  
this 27th day of April, 1948.

/s/ JOHN B. TANSIL,

United States Attorney.

By /s/ FRANKLIN A. LAMB,

Asst. U. S. Atty.

[Endorsed]: Filed April 29, 1948.